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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/531,162	04/12/2005	Peter Zatloukal	120083-141790	3236
60/172 7590 09/17/2009 SCHWABE, WILLIAMSON & WYATT, P.C. 1420 FIFTH, SUITE 3010 SEATTLE, WA 98101				
EXAMINER ALL FARIAD				
ART UNIT		PAPER NUMBER		
2446				
MAIL DATE		DELIVERY MODE		
09/17/2009		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/531,162

**Applicant(s)**

ZATLOUKAL ET AL.

**Examiner**

FARHAD ALI

**Art Unit**

2446

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 08 September 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-3,5-14,16-20,29-31 and 33 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3,5-14,16-20,29-31 and 33 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

**Status of Claims:**

**Claims 1-3, 5-14, 16-20, 29-31 and 33 are pending in this Office Action.**

**Claims 1, 10, 13, 14, and 29 are amended.**

***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 09/08/2009 has been entered.

***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claims 1-3, 5-14, 16-20, 29-31 and 33 are rejected under 35 U.S.C. 102(e) as being anticipated by Donaldson et al. (US Patent 7,272,232 B1) hereinafter Donaldson.

**Claim 1**

Donaldson teaches in a mobile client device, a method of operation comprising  
**(Column 2 lines 27-28, “Thus, a need exists for a method of prioritizing and balancing simultaneous audio outputs in a handheld device”):**

first providing, by the mobile client device, a first audio signal at a first audio volume level to a user, the first audio volume level being selectable by the user  
**(Column 5 lines 5-10, “FIG. 2 shows a system embodiment of the invention involving two sources, audio source A 200 and audio source B 201”);**

determining by the mobile client device, the first audio volume level at which the mobile first audio signal is being provided to the user by the mobile client device  
**(Column 5 lines 31-34, “Referring again to FIG. 2, a priority logic unit 202 is coupled to audio source A 200 and audio source B 201. At a minimum, the priority logic unit 202 is capable of sensing the amplitude and/or presence of each audio source”); and**

while providing said first audio signal to the user at the first audio volume level,  
providing, by the mobile client device, to the user a second audio signal at a second audio volume level, the second audio volume level being variable controlled by the mobile client device based on said first audio volume level **(Column 5 lines 37-44,**  
**“The priority logic unit 202 is coupled to variable attenuator/amplifier 203 and is also coupled to variable attenuator/amplifier 204. The priority logic unit 202 is furnished with a set of prioritization rules allowing it to control the amount of gain or attenuation that is applied to audio source A 200 by variable attenuator/amplifier 203, and the amount of gain or attenuation that is applied to**

**audio source B 201 by variable attenuator/amplifier 204”) and the second audio volume level being non-intrusively lower than the first audio volume level initially (Column 5 lines 45-46, “There are many possible prioritization rules that can be used to prioritize the two audio sources” and Column 6 lines 12-16, “For example, if source A is a high priority source (e.g. a telephone ring or other alert tone) and source B is a lower priority source (e.g. a music program) then the sound management system may lower the volume on source B, combine with source A and output the result”); and**

while providing the first and second audio signals, incrementally increasing, by the mobile client device, the second audio volume level from the initial non-intrusive lower volume level to a discernable volume level higher than the first audio volume level (Column 2 lines 58-62, “Upon sensing an increase in amplitude of source B above a preset threshold level, the attenuation or gain of one or both sources is adjusted such that a new signal ratio is established between the two sources”).

## **Claim 2**

Donaldson teaches wherein said determining comprises the mobile client device determining a first audio volume level at which the mobile client device is being utilized by a user for a first audio signal corresponding to music associated with output of at least one of an MP3 player and a radio included with the mobile client device (Column 3 lines 50-63, “In addition to received signals, the handheld device 100 of FIG. 1A may also be capable of generating signal events such as an alarm associated with a clock, timer, thermometer, or phone battery monitor. The device may also

**have internal audio sources such as speech or music stored in digital or analog form. Fixed or removable media may include magnetic, optical, and integrated circuit storage media. The magnetic media may be used for analog or digital storage. Alternatively, the speech or music material may be stored on a digital storage medium such as flash memory or random access memory (RAM). Speech or music may be stored in a variety of formats such as MP3 for music or Adaptive Differential Pulse Code Modulation (ADPCM) for speech”).**

### **Claim 3**

Donaldson teaches wherein said second providing comprises the mobile client device providing the second audio signal corresponding to a ring tone associated alert for at least a selected one from the group consisting of an incoming call, a received indication of a text message, a received indication of a voicemail message, a calendar alert, and a wireless mobile phone system utilities warning (**Column 5 lines 10-14, “Audio source A 200 and audio source B 201 may be either a signal event source or a continuous source. A signal event source is an audio signal of short duration such as a telephone ring or an alarm”).**

### **Claim 5**

Donaldson teaches wherein said incrementally increasing comprises incrementally increasing the second audio volume level to a pre-determined audio volume level limit above which hearing damage is likely to occur (**Column 2 lines 58-62, “Upon sensing an increase in amplitude of source B above a preset threshold level, the attenuation or gain of one or both sources is adjusted such that a new**

**signal ratio is established between the two sources” and Column 6 lines 49-52, “the radio program volume may always be reduced if the user is using a headphone output in order to prevent possible discomfort from too much amplification of the telephone”).**

#### **Claim 6**

Donaldson teaches wherein said incrementally increasing comprises incrementally increasing the second audio volume level by a selected one of a constant increment and an increasing increment **(Column 5 lines 37-44, “The priority logic unit 202 is coupled to variable attenuator/amplifier 203 and is also coupled to variable attenuator/amplifier 204. The priority logic unit 202 is furnished with a set of prioritization rules allowing it to control the amount of gain or attenuation that is applied to audio source A 200 by variable attenuator/amplifier 203, and the amount of gain or attenuation that is applied to audio source B 201 by variable attenuator/amplifier 204”).**

#### **Claim 7**

Donaldson teaches wherein said determining comprises the mobile client device determining the first audio volume level measured as an audio power level **(Column 5 lines 50-54, “For each possible audio source pair in the handheld device, the prioritization rules establish the relative gain applied to the sources. the absolute levels may be set in relation to a fixed decibel level, or it may be referenced to the level or presence of one of the sources”).**

#### **Claim 8**

Donaldson teaches wherein said determining a comprises the mobile client device determining the first audio volume level measured as at least one of volts, watts, and decibels (**Column 5 lines 50-54, “For each possible audio source pair in the handheld device, the prioritization rules establish the relative gain applied to the sources. the absolute levels may be set in relation to a fixed decibel level, or it may be referenced to the level or presence of one of the sources”**).

#### **Claim 9**

Donaldson teaches wherein said first and second providing comprises the mobile client device mixing said first and second audio signals (**Column 5 lines 62-64, “The output of variable attenuator/amplifier 203 and variable attenuator/amplifier 204 are coupled to a mixer 205 that combines the two signals into a single output 206”**).

#### **Claim 10**

Donaldson teaches the wireless mobile phone comprising (**Column 2 lines 27-28, “Thus, a need exists for a method of prioritizing and balancing simultaneous audio outputs in a handheld device”**):

a first audio resource, the first audio resource equipped to provide a first audio signal at a first audio volume level at which the mobile phone is being utilized by a user for the first audio signal, the first audio volume level being selectable by the user (**Column 5 lines 5-10, “FIG. 2 shows a system embodiment of the invention involving two sources, audio source A 200 and audio source B 201”**); and



a second audio resource, wherein the second audio resource is equipped to determine the first audio level at which the first audio signal is being provided to the user by the first audio resource (Column 5 lines 31-34, “Referring again to FIG. 2, a priority logic unit 202 is coupled to audio source A 200 and audio source B 201. At a minimum, the priority logic unit 202 is capable of sensing the amplitude and/or presence of each audio source”), and

provide a second audio signal at a second audio volume level to the user while the mobile phone is being utilized by the user for the first audio signal at the first audio volume level, the second audio volume level being variably controlled by the second audio resource based on said first audio volume level (Column 5 lines 37-44, “The priority logic unit 202 is coupled to variable attenuator/amplifier 203 and is also coupled to variable attenuator/amplifier 204. The priority logic unit 202 is furnished with a set of prioritization rules allowing it to control the amount of gain or attenuation that is applied to audio source A 200 by variable attenuator/amplifier 203, and the amount of gain or attenuation that is applied to audio source B 201 by variable attenuator/amplifier 204”) and the second audio volume level being non-intrusively lower than the first audio volume level initially (Column 5 lines 45-46, “There are many possible prioritization rules that can be used to prioritize the two audio sources” and Column 6 lines 12-16, “For example, if source A is a high priority source (e.g. a telephone ring or other alert tone) and source B is a lower priority source (e.g. a music program) then the sound

**management system may lower the volume on source B, combine with source A and output the result”),**

while the first and second audio signals are being provided, incrementally increase the second audio volume level from the initial non-intrusive volume level to a discernable volume level higher than the first audio volume level (**Column 2 lines 58-62, “Upon sensing an increase in amplitude of source B above a preset threshold level, the attenuation or gain of one or both sources is adjusted such that a new signal ratio is established between the two sources”**), and terminate the second audio signal preventing the second audio signal from intruding on the first audio signal in response to a user action (**Column 5 lines 16-20, “A continuous source is an audio source with a typically longer duration than a signal event source, and is usually not dependent upon an external event, but is selected arbitrarily by the user”**).

#### **Claim 11**

Donaldson teaches wherein the first audio resource comprises at least one of an MP3 player and a radio (**Column 3 lines 50-63, “In addition to received signals, the handheld device 100 of FIG. 1A may also be capable of generating signal events such as an alarm associated with a clock, timer, thermometer, or phone battery monitor. The device may also have internal audio sources such as speech or music stored in digital or analog form. Fixed or removable media may include magnetic, optical, and integrated circuit storage media. The magnetic media may be used for analog or digital storage. Alternatively, the speech or music material**

may be stored on a digital storage medium such as flash memory or random access memory (RAM). Speech or music may be stored in a variety of formats such as MP3 for music or Adaptive Differential Pulse Code Modulation (ADPCM) for speech”).

**Claim 12**

Donaldson teaches wherein the second audio resource comprises an audio resource equipped to receive a delivery of a message alert to the user (**Column 6 lines 12-16, “For example, if source A is a high priority source (e.g. a telephone ring or other alert tone) and source B is a lower priority source (e.g. a music program) then the sound management system may lower the volume on source B, combine with source A and output the result”).**

**Claim 13**

Donaldson teaches wherein the second audio resource comprises a ring tone generator (**Column 5 lines 10-14, “Audio source A 200 and audio source B 201 may be either a signal event source or a continuous source. A signal event source is an audio signal of short duration such as a telephone ring or an alarm”).**

**Claim 14**

Donaldson teaches wherein the second audio resource is equipped to receive a delivery of a message alert for at least a selected one from the group consisting of an incoming call, a received indication of a text message, a received indication of a voicemail message, a calendar alert, and a wireless mobile phone system utilities

warning (Column 5 lines 10-14, “Audio source A 200 and audio source B 201 may be either a signal event source or a continuous source. A signal event source is an audio signal of short duration such as a telephone ring or an alarm”).

#### **Claim 16**

Donaldson teaches wherein the second audio resource is equipped to incrementally increase the second audio volume level to a pre-determined audio volume level limit above which hearing damage is likely to occur (Column 2 lines 58-62, “Upon sensing an increase in amplitude of source B above a preset threshold level, the attenuation or gain of one or both sources is adjusted such that a new signal ratio is established between the two sources” and Column 6 lines 49-52, “the radio program volume may always be reduced if the user is using a headphone output in order to prevent possible discomfort from too much amplification of the telephone”).

#### **Claim 17**

Donaldson teaches wherein second audio resource is equipped to incrementally increase the second audio volume level by a selected one of a constant increment and an increasing increment (Column 5 lines 37-44, “The priority logic unit 202 is coupled to variable attenuator/amplifier 203 and is also coupled to variable attenuator/amplifier 204. The priority logic unit 202 is furnished with a set of prioritization rules allowing it to control the amount of gain or attenuation that is applied to audio source A 200 by variable attenuator/amplifier 203, and the

**amount of gain or attenuation that is applied to audio source B 201 by variable attenuator/amplifier 204”).**

**Claim 18**

Donaldson teaches wherein the first and second audio volume levels are measured as audio power levels (**Column 5 lines 50-54, “For each possible audio source pair in the handheld device, the prioritization rules establish the relative gain applied to the sources. the absolute levels may be set in relation to a fixed decibel level, or it may be referenced to the level or presence of one of the sources”).**

**Claim 19**

Donaldson teaches wherein the audio power levels are measured in at least one of volts, watts, and decibels (**Column 5 lines 50-54, “For each possible audio source pair in the handheld device, the prioritization rules establish the relative gain applied to the sources. the absolute levels may be set in relation to a fixed decibel level, or it may be referenced to the level or presence of one of the sources”).**

**Claim 20**

Donaldson teaches further comprising a mixer, the mixer equipped to mix the first and second audio signals (**Column 5 lines 62-64, “The output of variable attenuator/amplifier 203 and variable attenuator/amplifier 204 are coupled to a mixer 205 that combines the two signals into a single output 206”).**

**Claim 29**

Donaldson teaches the mobile client device comprising (Column 2 lines 27-28, **“Thus, a need exists for a method of prioritizing and balancing simultaneous audio outputs in a handheld device”**):

a storage medium having stored therein a plurality of programming instructions, which when executed, the instructions cause the mobile client device to (Column 4 lines 4-11, **“Computer system 100 includes a central processor 101 coupled with the bus 99 for processing information and instructions, a volatile memory 102 (e.g., random access memory RAM) coupled with the bus 99 for storing static information and instructions for the central processor 101 and a non-volatile memory 103 (e.g., read only memory ROM) coupled with the bus 99 for storing static information and instructions for the processor 101”**) first provide a primary audio signal at a first audio volume to a user, the primary audio volume level being selectable by the user (Column 5 lines 5-10, **“FIG. 2 shows a system embodiment of the invention involving two sources, audio source A 200 and audio source B 201”**),

determine the primary audio volume level at which the primary audio signal is being provided to the user (Column 5 lines 31-34, **“Referring again to FIG. 2, a priority logic unit 202 is coupled to audio source A 200 and audio source B 201. At a minimum, the priority logic unit 202 is capable of sensing the amplitude and/or presence of each audio source”**), and

while said primary audio signal is being provided to the user at the first audio volume level, provide a secondary audio signal at a second audio volume level to the

user, the second audio volume level being variably controlled by the mobile client device based on said first audio volume level (Column 5 lines 37-44, “The priority logic unit 202 is coupled to variable attenuator/amplifier 203 and is also coupled to variable attenuator/amplifier 204. The priority logic unit 202 is furnished with a set of prioritization rules allowing it to control the amount of gain or attenuation that is applied to audio source A 200 by variable attenuator/amplifier 203, and the amount of gain or attenuation that is applied to audio source B 201 by variable attenuator/amplifier 204”) and the second audio volume level being non-intrusively lower than the first audio volume level initially (Column 5 lines 45-46, “There are many possible prioritization rules that can be used to prioritize the two audio sources” and Column 6 lines 12-16, “For example, if source A is a high priority source (e.g. a telephone ring or other alert tone) and source B is a lower priority source (e.g. a music program) then the sound management system may lower the volume on source B, combine with source A and output the result”), and while the mobile client device provides the first and secondary audio signals, incrementally increase the secondary audio volume level from the initial non-intrusive volume level to a discernable volume level higher than the first audio volume level (Column 2 lines 58-62, “Upon sensing an increase in amplitude of source B above a preset threshold level, the attenuation or gain of one or both sources is adjusted such that a new signal ratio is established between the two sources”); and

a processor coupled to the storage medium to execute the programming instructions (**Column 4 lines 4-11, "Computer system 100 includes a central processor 101 coupled with the bus 99 for processing information and instructions"**).

#### **Claim 30**

Donaldson teaches wherein the primary audio signal corresponds to music associated with output of at least one of an MP3 player and a radio included with the mobile client device (**Column 3 lines 50-63, "In addition to received signals, the handheld device 100 of FIG. 1A may also be capable of generating signal events such as an alarm associated with a clock, timer, thermometer, or phone battery monitor. The device may also have internal audio sources such as speech or music stored in digital or analog form. Fixed or removable media may include magnetic, optical, and integrated circuit storage media. The magnetic media may be used for analog or digital storage. Alternatively, the speech or music material may be stored on a digital storage medium such as flash memory or random access memory (RAM). Speech or music may be stored in a variety of formats such as MP3 for music or Adaptive Differential Pulse Code Modulation (ADPCM) for speech"**).

#### **Claim 31**

Donaldson teaches wherein the secondary audio signal corresponds to a ring tone associated alert for at least a selected one from the group consisting of an incoming call, a received indication of a text message, a received indication of a



voicemail message, a calendar alert, and a wireless mobile phone system utilities warning, and the programming instructions are further configured to terminate the secondary audio signal preventing the secondary audio signal from intruding on the primary audio signal in response to an user action (**Column 5 lines 10-14, "Audio source A 200 and audio source B 201 may be either a signal event source or a continuous source. A signal event source is an audio signal of short duration such as a telephone ring or an alarm"**).

#### **Claim 33**

Donaldson teaches wherein the primary audio volume level is measured as an audio power level (**Column 5 lines 50-54, "For each possible audio source pair in the handheld device, the prioritization rules establish the relative gain applied to the sources. the absolute levels may be set in relation to a fixed decibel level, or it may be referenced to the level or presence of one of the sources"**).

#### ***Response to Arguments***

4. Applicant's arguments with respect to claims 1-3, 5-14, 16-20, 29-31 and 33 have been considered but are moot in view of the new ground(s) of rejection.

#### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to FARHAD ALI whose telephone number is (571)270-

1920. The examiner can normally be reached on Monday thru Friday, 7:30am to 5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jeffrey C. Pwu can be reached on (571) 272-6798. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Farhad Ali/  
Examiner, Art Unit 2446

/Jeffrey Pwu/  
Supervisory Patent Examiner, Art Unit 2446